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IN THE

# Supreme Court of the United States

October Term, 1943

No. 472

THE UNITED STATES OF AMERICA, *Petitioner,*

*vs.*

EDNA W. BALLARD and DONALD BALLARD,

## ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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### Statement of Facts.

The defendants named in the indictment are all leaders of the I AM Activity, a religious organization which was founded about the year 1932 upon teachings received by the now deceased Guy W. Ballard (also named as a defendant in the indictment), husband of the defendant Edna W. Ballard and father of the defendant Donald Ballard, through revelations from whom are known by the I AM Activity as "Ascended Masters." Most of these revelations came from the Ascended Master Saint Germain. However, there are many of these Ascended Masters in addition to Saint Germain, among them being Jesus. The

Ascended Masters are believed by the I AM Activity to be divine beings who exist in an intermediate sphere between God and man. They are believed to be devoted to the assistance of Mankind and instrumental in the attainment by Mankind of high moral standards, harmony and eventual salvation. The words "I AM" denote the existence and relationship of the God Being in and to each individual.

Mr. Ballard received these revelations from the Ascended Masters commencing in the latter part of 1930 and until shortly prior to his death in December of 1939. After the foundation of the I AM Activity, the teachings were disseminated through classes held and conducted by Mr. Ballard and the other "Messengers," and, in connection therewith, groups of students in various cities throughout the United States and elsewhere were formed, and religious books, magazines and other articles were distributed throughout the groups and members of the Activity. Later, the teachings were also promulgated in radio addresses conducted by the Ballards.

The members of the I AM Activity are primarily students of the tenets and are found chiefly in the United States, but groups are maintained in Canada and other foreign countries. No actual lists or records of membership are maintained, but it is estimated that the number of students and members is at least 300,000, and may be many times that number.

Following the first revelations received by Mr. Ballard from Saint Germain, Mr. Ballard published a book entitled "Unveiled Mysteries." This book was followed by others: "The Magic Presence," "The I AM Discourses," etc., and, while containing some narrative of experiences of

Mr. Ballard with the Ascended Masters, chiefly encompass the tenets of the I AM Activity.

The first classes or meetings were held in and about Chicago, Illinois, but, later, at the suggestion of one of the followers, a Mr. Sieber, the Ballards held classes in other cities, and groups of students were formed in the larger cities throughout the United States. These groups held regular meetings, and, from time to time, in their cities, the Ballards would conduct larger classes attended not only by the members of the group in the particular cities, but by others who might come from other localities or those interested in learning the principles of the I AM, irrespective of actual membership. The various groups maintained reading rooms and sanctuaries in which were kept the literature of the Activity from which anyone who desired might, without charge, learn the basic teachings of the Activity. The books and literature of the Activity were also contained in most of the public libraries throughout the country, including the Congressional Library. They have been published in Braille and placed in numerous penal institutions throughout the country.

Each of the various groups is self supporting, defraying all of its own expenses. They are not financially accountable to the I AM Activity. They are not required in any way to contribute to the leaders of the organization. However, as to the manner of conducting meetings, as to the subjects to be taught, as to the manner in which they are taught and generally as to matters of faith and morals, they are directed by the parent organization. The groups are in charge of individual leaders appointed through the Ballards. The activities of the Movement are carried on through the Saint Germain Foundation, a non-profit cor-

poration. The books and other religious articles and paraphernalia are printed, manufactured and distributed through the Saint Germain Press, a stock corporation, the stock of which is owned by the Ballards. The Ballards are the officers of both corporations, the Saint Germain Foundation and the Saint Germain Press.

The Ballards are the Accredited Messengers of the Ascended Masters and, with their son, Donald, and others of the defendants who are appointed messengers, conducted classes in various cities throughout the United States. These classes were, in effect, congresses at which the Ballards and the other appointed messengers taught and explained to members and those interested the precepts and doctrines of the I AM Activity. The classes usually lasted for about a week, and some had as many as five thousand in attendance.

As aforesaid, all of the revelations were received by Mr. Ballard from the Ascended Masters during his lifetime. Since his death, the leaders of the I AM Activity have been engaged in expounding the teachings and tenets contained in these revelations.

The organization is financed and maintained either through voluntary donation or love gifts from the students or from the profits of the sale of the books and other religious articles used by the Activity. No dues, membership fees or tithings are charged or solicited, and, as aforestated, the individual groups are financially independent and not accountable to, or dependent upon, the central organization conducted by the Ballards. The radio broadcasts were authorized by the Ballards, but were sponsored by individual groups, private persons, or the Ballards personally.

There is a monthly magazine known as "The Voice" which is sponsored by the I AM Activity and is a vehicle for the release of teachings and announcements pertaining to the affairs of the Activity. However, the I AM Activity has no financial interest in the magazine. It is owned and published by Charles Sindelar, a member of the Activity.

All moneys received by the Ballards, as leaders of the Activity, whether such moneys are received from love gifts, donations, or sales, are in turn used by the Ballards in the advancement and expansion of the Activity. The Ballards, of course, as well as other Messengers who conduct classes and receive love gifts, defray their living expenses, overhead expenses and expenses of travel from this income. This is necessarily so, as the Ballards, the Messengers, and most of the group leaders have no business pursuits and devote their entire time to the advancement of the I AM Activity. The I AM Activity fosters an organization of male members known as "Minute Men," whose especial purpose is the advancement of patriotism to the United States and the defeat of all anti-American activities. The evidence shows that the I AM Activity teaches Christian principles conducive to high moral standards and good citizenship.

The substance of the indictment is contained in the opinion of the Circuit Court printed herafter in the appendix at page 9. From the filing of the indictment through to the denial of the motion for a new trial, the defendants questioned at every opportunity the sufficiency of the indictment and the sufficiency of the evidence offered in support thereof. Midway in the presentation of the Government's case, the court instructed the jury that the truth or falsity of the experiences that the defendants

claimed to have had with the Ascended Masters, that is, the truth or falsity of their religious tenets, was not in issue; that the only question to be decided was whether or not the defendants made representations concerning these teachings and experiences in good faith. Thus, there was removed from the indictment the truth or falsity of the representations of the defendants as to the many religious tenets specifically alleged in the indictment to have been misrepresentations. All attacks of the defendants against the indictment were overruled by the trial court, and the issue as defined by the trial court submitted to the jury, resulting in a verdict of guilty against appellants—as to Mrs. Ballard on Counts 2, 3, 5, 7, 8, 11 and 12, and as to Donald Ballard, on Counts 8, 11 and 12. A verdict of not guilty was rendered as to the other defendants. (Count 1 was dismissed as to all defendants.)

The defendants expounded the principles and tenets of the I AM Activity. The Government, in its indictment, referred to many of these tenets, that is, as to subject matter, and in the indictment alleged certain representations to have been made, which representations were alleged to have been false and known by the defendants to have been false. In other words, the Government, in its indictment, charged the defendants and the I AM Activity with making certain representations relative, among other things, to immortality, healing, precipitation, ascension, cataclysms, and many others. While it is true that the I AM Activity and the defendants did make representations in respect to such tenets, the fact is that the actual representations, beliefs and tenets were not as alleged in the indictment. *Thus:*

(1) The I AM Activity has as a tenet, and the defendants expounded, that every person is immortal in the sense

that "every individual has the Divine Flame of Life within him and that—God-part-of-him—has dominion wherever he moves in the universe." (Unveiled Mysteries, p. 17.) Further, the Activity maintained and preached that each individual passes through a series of re-embodiments, which re-embodiments would continue to occur until a certain perfection had been reached, at which time there would be no further requirement for earthly, carnate existence, and an ascension would occur. The defendants taught and believed that they had had previous embodiments, as had all other individuals. However, the defendants did not represent, nor did the I AM Activity hold as a tenet, as alleged in the indictment (Subds. 1 and 6, Subd. i) that Guy W. Ballard had attained a supernatural state of immortality, which condition enabled him to conquer disease, death, poverty, old age and misery, or that Edna W. Ballard and Donald Ballard had attained a supernatural state of self immortality by reason of which they were free from ailments common to man and were able to conquer disease, death, poverty, old age and misery, and which power the defendants were able to, and would, transmit to others willing to pay therefor.

(2) The I AM Activity also maintains as a tenet, and the defendants expounded, that Saint Germain, Jesus and other Ascended Masters had appeared to the Ballards in tangible, visible form, and that Saint Germain and other Ascended Masters had dictated the published discourses of the Activity. They further taught, in this respect, that it could be hoped that, if and when, through the practice of the tenets of the I AM Activity, the students could attain sufficient harmony and perfection, the Ascended Masters would appear to members and students of the I

AM in the physical, tangible, visible form. It was not, as alleged in the indictment, a representation that there "would be in one or more places in the United States an actual visitation of 'Ascended Masters' or divine entities, and that said divine entities would then and there appear in physical form before the assembled followers of the I AM Movement." (Subd. 15, Subd. i.) As aforesaid, it was merely represented that, if sufficient harmony and perfection were attained, such visitations could be expected.

(3) The I AM Activity also holds as a tenet, and the defendants expounded, that through calls made to the Mighty I AM Presence, healings and cures could be and had been effected; that such healings and cures had been effected not only by the calls made by the Ballards to the Mighty I AM Presence, but by individuals. Further, it was represented as a dictation and revelation of the Ascended Masters that Mr. Ballard had, through his calls to the Mighty I AM Presence, effected over twenty thousand healings "by his calls" in five years. In this connection, however, the Government charges in the indictment that the Ballards represented that they had the power to heal and the power to cure. Thus, the fact is that the Activity taught one thing and the indictment alleged another, the indictment ignoring completely that the cures were professed to have been accomplished only through calls rather than through any individual power.

(4) The I AM Activity also holds as a tenet, and the defendants expounded, that if and when a sufficient degree of harmony and perfection were attained by an individual through the practice of the tenets of the I AM Activity, the physical body would be purified and taken into the higher mental body and, thus, a physical ascension had.

Later, what is known as a New Dispensation was revealed by Saint Germain, wherein persons not otherwise able to complete the ascension in the present embodiment would be able to do so, that is, the purified essence of the physical body would be turned into the etheric body, leaving the human form, the outer structure or discordant portion, on the earth. [Exh. 44, R. p. 5.] The Government charges in the indictment that it was represented "that persons who followed the principles, doctrines and precepts of the I AM Movement and the teachings of the Ballards would not die but would ascend in their physical tangible bodies, associate with divine entities and Ascended Masters, and be able thereafter to return to earth at will and to re-ascend if they so desired." The Activity did not, nor did the defendants, teach, under either the new or the old dispensation, that the physical body in its ordinary state would ascend. Even before the New Dispensation, it was taught that it was the etheric body composed of the finest of the physical substance that would ascend. The New Dispensation as to ascension was announced in the latter part of 1938. Mr. Ballard died more than a year later. Still, the Government draws an innuendo that the New Dispensation relative to ascension was created in anticipation of Mr. Ballard's death, although at the time of the granting of the New Dispensation there was no indication of poor health or impending death.

(5) The I AM Activity also holds as a tenet, and the defendants expounded, that everything in the physical world came into physical form and manifestation by the activity of the law of precipitation: and that by the practice and application of the tenets of the I AM Activity sufficient harmony and perfection could be attained by the

individual to the extent that physical needs could be precipitated, provided they were for a useful purpose; that there are two kinds of precipitation—that through natural channels, and instantaneous precipitation. The Ballards and many of the students had been able to obtain precipitation through natural channels by sufficient belief and harmony. It was believed that eventually, when sufficient perfection and harmony had been achievd, instantaneous precipitation could be effected. The teaching concerning precipitation is somewhat akin to the power of prayer, believed efficacious by other faiths. The Ballards did not claim that they had been able to effect instantaneous precipitation. In fact, Mrs. Ballard testified that the closest she had ever been to obtaining instantaneous precipitation was one time when she had been able to condense in her hands points of light substance, which she examined under a reading glass, and which remained for approximately twenty minutes; that, except for that one time, she had not sought or obtained instantaneous precipitation. [R. p. 1148.]

But, contrary to the foregoing, the Government charges in the indictment that the defendants represented that the "Ballards had a divine and supernatural ability to bring forth from a supernatural state, money, riches and other things necessary to Mankind, and could transmit that ability to others willing to pay therefor." (Subd. 9, Subd. i.)

(6) The I AM Activity also holds as a tenet; and the defendants expounded, that cataclysms have occurred on the earth; that they would occur again, particularly, if the people did not live in harmony and make a conscious effort to obtain perfection. The I AM Activity did not teach that a date was set for a cataclysm. The Activity

did not teach that the United States had been saved from a cataclysm by the intervention of the defendants' power and influence. The tenets and teachings of the Activity are, of course, found in the books and discourses. Nowhere in the books or discourses was there any pretense of setting a date for a cataclysm, or any claim that the Ballards had in fact prevented cataclysms from occurring. However, there were one or two apostates who testified that in private conversation Mrs. Ballard had claimed that a cataclysm might be expected on a particular date, and that Mrs. Ballard had stated in private conversation that cataclysms had been prevented by the Ballards.

Petitioner in its statement, in addition to referring to the subject matters above covered, makes many statements relative to the effect of the evidence introduced in the trial, irrespective of their pertinency to any subject of the indictment. It is stated that the books and discourses were elaborated upon and revised. This is not true, except so far as concerns narrative portions of the books. There was no evidence that the discourses were revised or that any changes, other than those of a typographical character or those pertaining to punctuation were made.

Again, the Government says that the evidence shows that Mrs. Ballard had, during a class conducted while Mr. Ballard was on his deathbed, stated that Mr. Ballard was with Saint Germain doing special work. Certainly, anybody on his deathbed who believes in religion would devote his dying moments to attempts to commune with his God or with the angels or saints of his church. Mrs. Ballard did not say he was physically away somewhere with Saint Germain. There was no evidence that upon the occurrance of Mr. Ballard's death that the fact was concealed

or attempted to be concealed from the members of the I AM Activity.

Again, the Government says that Mr. Ballard's secretary testified that he had never heard any person claim or attest to the fact that such person had been cured of cancer, but that the Ballards had represented that such illness had been cured. Even though the secretary of Mr. Ballard testified that numerous people had told him that cures of one kind or another had been effected upon them, he did not profess to know of every cure that people claimed had been effected upon them. Moreover, he did not testify as the Government states, that the Ballards represented that they had effected cures, but always, as in all teachings, he testified that it was claimed that cures had been effected *through calls* made to the I AM Presence.

The evidence shows that innumerable letters were received by the Ballards asking them to place calls to the Mighty I AM Presence for cures. It became physically impossible for each of these letters to be answered by Mr. Ballard personally, so they were segregated into particular groups, and after being submitted to Mr. Ballard for the placing of calls, a particular form letter was dispatched by the secretaries and subordinates acknowledging the requests for the placing of the calls. This is criticized by the Government, but its reason for so doing is not clear, as it does not pretend that the answering of the letters had anything to do with the placing of the calls.

The I AM Activity believed that certain things were discordant. For instance, they believed that red meat, alcohol and tobacco were discordant. They also believed that the colors red and black were discordant. For a while certain phonograph records containing invocations and

discourses were manufactured and sold on the commonplace, black composition. Later, the Ballards, after considerable searching and investigation, discovered that the records could be manufactured of a blue-colored substance. They believed and represented that the blue record had certain healing powers. This is entirely consistent with their belief as to the discordant color black, and, undoubtedly, the statement was made in comparison to the effect of the black records. The Government, however, seeks to dispute the effectiveness of the blue record over the black record by therapeutic testimony, and, moreover, because the defendants did not personally invent or compound the substances out of which the blue records were made, would claim that it was a misrepresentation to say that considerable time and expense had been consumed in effecting the use of the blue record instead of the black.

Charles Sindelar, who publishes the I AM Magazine, "The Voice," was a member, student and believer in the I AM Activity. He had been an artist of considerable repute, having received commendation from various church dignitaries—Catholic, Protestant and otherwise—for his religious paintings. Before his association with the Activity, he had painted a picture of Jesus which he claimed to have been inspired by nightly visitations of Jesus to him in his sleep. The painting of this picture had nothing to do with the I AM Activity and was admittedly a beautiful picture. After the foundation of the I AM Activity, and while Mr. Sindelar was a member thereof, Mr. Ballard asked Mr. Sindelar to paint a picture of Saint Germain, and Mr. Sindelar drew a sketch or drawing of Saint Germain, which did not meet with the satisfaction of the Ballards. Thereupon, Mr. and Mrs. Ballard and

Mr. and Mrs. Sindelar sat down and called upon the MIGHTY I AM Presence to give Mr. Sindelar a better idea of the appearance of Saint Germain. He obtained a mental impression, started the picture, and, thereafter, in the course of its painting, he, Mrs. Sindelar and Mr. and Mrs. Ballard would sit down and call upon the Mighty I AM Presence for further impressions. When the picture was completed, Mr. Ballard agreed that it was a splendid picture of Saint Germain. Both the picture of Jesus and the picture of Saint Germain were advertised in "The Voice" magazine. The one of Jesus was described as being as Jesus had personally appeared to Mr. Sindelar. The one of Saint Germain was described as being a likeness of Saint Germain as he had appeared on many occasions in the retreat of the Ascended Masters. It was not claimed that Saint Germain had appeared to Mr. Sindelar, but the Government persistently misconstrues the representations made relative to these two pictures. Much ado is made of the fact that the Saint Germain picture had certain scrolls at the top, which scrolls are commonly found among Rosicrucian subjects. A contention that the picture of Saint Germain had actually been originally painted by Teresa de Carranza and copied by Mr. Sindelar was made by the Government, but a mere comparison of the pictures discloses their dissimilarity.

Donald Ballard at the time of the foundation of the I AM Activity was a young lad of about 14 years. Donald, according to the testimony of witnesses, had his doubts upon occasions as to the principles and tenets of the I AM

Activity. It was testified that Donald had, during periods of doubt, stated that he thought the movement was bunk and a fake. This was denied by Donald. The evidence also shows that Donald was given a liberal allowance, and, when he became married, was given moneys to provide himself with some luxuries. At the same time, the evidence undisputably shows that Mr. and Mrs. Ballard endeavored to curtail extravagances of Donald and reprimanded him from time to time as parents ordinarily reprimand their children. None of these indiscretions on the part of Donald were established to be anything unusual or of any great consequence.

Evidence was permitted to be introduced to the effect that, as the activities of the I AM expanded and its membership increased, the income from love gifts, sales of books, magazines, etc., increased, and that they were substantial. As in every religious organization, financial matters were a continuing problem. Naturally, the Ballards were not too pleased when income failed to meet needs and expectations. The evidence also showed that at one time the financial manager received a percentage of the sale of books and that limited discounts were allowed to retail stores who handled the religious articles and books of the Activity. By the same token, the evidence showed that the expenses of the organization were large; that the leaders of the Activity had no private income sources and their work entailed traveling from city to city with staffs of members (and considerable general expense). There was no evidence that, except for a reasonable living, the

Ballards received anything through the I AM Activity that was not put right back into its expansion and growth.

The appeal from the conviction was based not alone upon the erroneous instruction upon which the reversal was ordered by the Circuit Court of Appeals, but also upon insufficiency of the evidence, improper conduct of counsel and other errors. Conduct of counsel for the Government, particularly during argument, was exceedingly prejudicial. Denunciation of defendants and ridicule of their religion was freely employed. At one point it was argued that the defendants were cheats, charlatans and religious racketeers if they could not obtain visible and physical proof of the efficacy of their beliefs upon their own persons. [R. p. 1540.] Counsel insisted upon comparing the teachings of the Activity to the antics of the characters in the funny papers, and one of the Ascended Masters to a well-known radio comedian. [R. pp. 1237, 1503.] After reversal, petition for rehearing was made by the Government in the Circuit Court of Appeals and it was denied. The original opinion of the Circuit Court was written by Justice Mathews, and the opinion on denial of rehearing was written by Justice Denman. [For opinion of Justice Denman, see App. p. 22.]

## ARGUMENT.

### I.

### The United States Has Wholly Failed to Show That Special and Important Questions of Law Are Involved, Necessitating the Granting of the Petition.

An examination of the grounds claimed by the Government as justifying the granting of the writ will show that none of them exists as claimed by the Government, and there is no justification shown for granting the relief requested. We will show that the alleged conflict between this decision and decisions of other Circuit Courts is wholly nonexistent, and that the claim that it does exist is based upon a misinterpretation of the indictment. Likewise, we will show that the decision of the Circuit Court is neither insufficient for the guidance of the trial court nor will it hamper the Government in the proper administration of the mail fraud statute. The decision of the Circuit Court turns on the propriety of an instruction given by the court to the jury. It should be first pointed out that two reasons for its being erroneous are set forth in the opinion. One only is discussed by the Government in its petition. Perhaps that fact is a tacit admission that the Circuit Court is correct in determining that the instruction was erroneous for the other reason given. We will, however, discuss briefly the first reason given by the Court.

**A. The Instruction Didn't Correctly State the Issues.**

It is notable that the petition for writ of certiorari wholly neglects to consider that portion of the opinion of the Circuit Court of Appeals wherein it is pointed out that the instruction involved did not constitute "a correct statement of the issues." The erroneous instruction was given twice, once in the course of the trial [R. p. 403], and again in almost identical terms, at the conclusion of the trial, when the court instructed the jury. [R. p. 1575.] *It commences with the words "here is the issue in this case," and, again, states: "The issue is." It concludes with the statement that if the defendants did not believe the things they wrote and preached, but used the mails for the purpose of getting money, "the jury should find them guilty."**

The instruction is clearly a formula or binding instruction, and the giving of it was error unless there was included in it all of the issues necessary to a verdict of guilty. In fact, it was doubly erroneous in that it not only stated the basis upon which the jury should find the defendants guilty, but on two occasions used the word "issue" in the singular when several issues were involved; nor was the issue stated, one actually before the jury.

A formula instruction should show the circumstances which must concur to warrant a verdict. *Corvello v. Baumstuger*, 115 C. A. 194, 1 P. (2d) 484. If an instruction undertakes to direct a verdict if the jury finds certain facts, it must necessarily contain all of the facts which will authorize the verdict directed, and it is imma-

*Note: All italics herein are ours.

terial that the court in the instruction did not undertake to instruct the jury on the whole case. *Farmers League and Community Telephone Assn. v. Ohio & Mississippi Valley Telephone Co.*, 194 Ill. App. 166. If it fails to do so, it is fatally defective and cannot be cured by other instructions. *Gage v. City of Vienna*, 196 Ill. App. 585.

An instruction is erroneous and reversible error which makes the case turn solely upon a certain fact and fails to include certain issues and to leave to the jury inferences to be drawn from the facts. *Stutz v. U. S.*, 47 F. (2d) 1029, 5th.

An instruction which states that a certain question of fact constitutes the "underlying issue" in the case is erroneous when such question of fact was not the issue at all. *Sacramento Suburban Fruit Lands v. Harry Justice Curtis*, 36 F. (2d) 923. We submit that in this case the court, in effect, informs the jury that the case turns on a certain issue of fact when there were many and also incorrectly states the one issue mentioned.

In addition to repeating this instruction in its charge to the jury, that charge contains further instructions emphasizing the error and in language equivalent to that condemned in the last-mentioned case. The court stated to the jury:

> "The question of the defendant's good faith is the *cardinal* question in this case." [R. p. 1575.]

Again,

> "The *ultimate* question of fact before you as a jury is as to the good faith of the defendants. . . ." [R. p. 1589.]

The opinion of the Circuit Court pointed out that one of the issues not covered by the instruction was whether the defendants "devised the scheme described in Counts 1-11. *The instruction itself omits entirely the necessity of proof of the devising of* a scheme, yet the devising of a scheme is an essential of the offense charged in the indictment. *Worthington v. U. S.*, 64 F. (2d) 936; *U. S. v. Mannic*, 104 F. (2d) 575; *Cohen v. U. S.*, 50 F. (2d) 819.

The defendant must knowingly devise such scheme, specific intent being required under the statute. *U. S. v. Corlin*, 44 Fed. Supp. 940.

Individual false representations unrelated to each other and not part of a scheme to defraud are insufficient to prove an offense. *Rude v. U. S.*, 74 F. (2d) 673.

Thus, contrary to the instruction, a finding of all of the facts which the court stated would warrant a verdict of guilty would not constitute proof of an offense under the mail fraud statute or any other federal law. Furthermore, the proof required by the Government is that defendants devised *the scheme laid in the indictment*. Proof of misrepresentation of facts unrelated to the alleged scheme forming the basis of the charge will not warrant a verdict of guilty. *Rude v. U. S.*, 74 F. (2d) 673.

A most cursory comparison between the instruction complained of and the indictment will show that, while the indictment charged a particular scheme, the instruction authorizes a verdict of guilty if the defendants did not believe "the things that they wrote, the things that they preached." It is for that reason we state that the one issue attempted to be stated was not an issue at all.

The second issue omitted, as pointed out in the opinion of the Circuit Court, was whether for the purpose of executing a scheme they used the mails in the manner described in the counts. The court does say that they must have used the mails "for the purpose of getting money"; but, obviously, this was not the issue. The question was whether they used the mails in the furtherance of the scheme laid in the indictment and in the manner charged in the indictment. The correspondence must have some relation to the scheme to defraud which is charged. It must be in execution of the scheme. *McLendon v. U. S.*, 2 F. (2d) 660; *Newingham v. U. S.*, 4 F. (2d) 490; *Weiss v. U. S.*, 122 F. (2d) 675.

The opinion points out that a third issue omitted was whether the defendants conspired to commit the offenses charged in Counts 1-11. It is settled that the law requires, in the case of a conspiracy, not only a combination to accomplish the scheme by concerted action, but a conspiracy to use the mails to execute the scheme, proof of which is not required in other than the conspiracy count. Proof of *intention to use the mails to* defraud is a necessary element of the offense, though not a necessary element of the substantive offense. *Guardallibini v. U. S.*, 128 F. (2d) 984; *Mazurosky v. U. S.*, 100 Fed. (2d) 958; *Farmer v. U. S.*, 223 F. 902.

In addition, the Circuit Court points out that, as a fourth issue, there was a question whether, to effect the objects of any conspiracy, a party thereto committed any of the overt acts charged in Count 12.

In each particular mentioned by the Circuit Court, the instruction given was erroneous and, entirely aside from other reasons given, warranted a reversal of the judgment.

**B. The Record Does Not Show the Erroneous Instruction Was Solicited by Defendants' Counsel, But if so Solicited It Would Not Constitute Reason for Granting the Writ.**

The Government claims that the instruction complained of was one asked for and approved by counsel for the defendants. Moreover, the Government says that the decision of reversal found the ". . . conviction . . . to have been supported by substantial evidence. . . ." In the first place, the decision of reversal by the Circuit Court did not find the *conviction* to have been supported by substantial evidence. The decision found that there was substantial evidence that the defendants schemed to make some, if not all, of the representations set forth in paragraphs 1 to 18 of the indictment, and that some, if not all, of the representations which they schemed to make, were false. It then goes on to state that as to whether such representations were false or true was a question which should have been submitted to the jury. Obviously, the court did not hold that there was substantial evidence to support the conviction, but merely pointed out that there was some evidence both ways as to whether or not the representations were true or false, and, that being so, it was the province of the jury to make a determination in this respect. Hence when the Government seeks to extend to this portion of the decision of the Circuit Court a holding that the *conviction* was supported by substantial evidence, the Government is seeking to write its viewpoint into the decision by giving a meaning to the words of the decision which is totally incompatible with its context.

The Government states that the instruction complained of was given upon the solicitation of the defendants. While this statement is made by petitioner on page 19 of

its petition, however, it is notable that record citation is curiously missing. True, on page 11 of its petition, the Government refers to Record p. 1346 to the effect that there was a discussion (denominated "conference" among counsel with the court immediately preceding the giving of the instruction. It is also fair to assume that in the course of the discussion the argument over the pending objection referring to the matter of relationship of religious liberties to the proffered testimony arose. On page 12 of its petition, the Government says that the court gave the instruction to the jury with the consent of counsel for both sides, and refers to pp. 402, 404 of the Record, as well as again to p. 1346 of the Record. A careful examination of these portions of the Record wholly fails to substantiate the statement of the Government. The Government realizes that, because, lo and behold, after citing the Record above, it appends a footnote at the bottom of page 12 referring not to the Record, but, to what is apparently the typewritten transcript of the trial proceedings. Surely the Government knows that this is not part of the Record, and under what authority it presumes to insert this footnote is not made clear. Again, it is indicated that the Government realizes its deficiency, because next it seeks to draw some support from the Record, at pp. 502, 1125 and 1126, to the effect that this instruction was relied upon throughout the trial by defense counsel. How this can be construed as being tantamount to a request for the original giving of the instruction is difficult to see. Defense counsel found themselves in the position of having to try the case under certain rulings made by the trial court. They were bound by those rulings in the presentation of evidence, as was the Government, and all that appears on

p. 502 of the Record is that defense counsel called attention to the ruling of the court now under discussion when a question was asked by the Government inconsistent with the prior ruling of the court. Likewise, at pages 1125 and 1126 of the Record, counsel for the defendants, in guiding its presentation of the defense evidence stated that it had in mind the ruling of the court as to the issue as defined in the instruction. This again shows merely that defense counsel were respecting the ruling made by the court on the issue. Next, on page 14 of the Record, in its petition, the Government says that defense counsel in argument referred to this ruling of the court. There is no doubt that this statement is true; but what effect does it have, except to show that, naturally and properly, defense counsel were limited by the decision of the court as to the issue as given in this instruction?

Thus, we see that the Government does not establish from the Record the premise of its argument in this respect. As a matter of fact, the court, in giving the instruction, stated that the arguments of counsel on the particular point raised were not necessarily the comment that he, the court, was about to make in giving this instruction. [R. p. 1346.] The most that can be said is that, after the trial court made its ruling, all counsel agreed that it was proper court procedure for the court to advise the jury as to what his ruling was. This, of course, is far from constituting, as the Government now says, an instruction given at the particular request of the defendants.

The Government has failed to show any authority or precedent that this contended request for the instruction by the defendants constitutes a reason for this Honorable

Court granting a review. Furthermore, the decision of the Circuit Court is not in anywise predicated upon a situation where the error is created by counsel; and if it be assumed that the court erroneously construed the record, still no inconsistency in the decisions would be shown.

**C. The Contention That the Decision Adopts an Erroneously Narrow Construction of the Mail Fraud Statute in Conflict With the Decisions of the Other Circuit Courts of Appeal Is Based Upon a Misinterpretation of the Indictment.**

An inspection of the indictment shows that it alleges the formation of a certain scheme to defraud, which scheme was one to obtain money *by false and fraudulent representations*. [R. pp. 4, 5, 6, 8.] In most instances, direct reference is made to the 19 representations set forth specifically and in detail at pp. 9-20 of the record. [R. pp. 3 and 5.] Pages of the indictment are occupied with detailed and specific statements of the representations which the defendants allegedly schemed to make. The trial was had upon the theory that the scheme alleged was one to obtain money by means of false representations detailed in the indictment. For the first time, on the petition for rehearing in the Circuit Court of Appeals, and in this petition, the Government suggests a new theory, to wit, that the scheme, instead of being one to obtain money by means of the representations set forth, was predicated upon a theory of fiduciaries defrauding their beneficiaries. In other words, the Government now wishes to ignore, apparently as surplusage, almost the entire indictment. It must, however, be borne in mind that it is the established rule that it is not sufficient merely to allege a scheme to defraud, but that the scheme must be stated with all such particulars as are essential to consti-

tute the scheme or artifice and to acquaint the defendant with what he must meet on the trial. (*U. S. v. Hess*, 124 U. S. 483.) The particulars of the scheme are matters of substance and must be set forth with sufficient certainty fairly to acquaint the defendant with the charges against him. (*Savage v. U. S.*, 270 F. 14, 8th.) The scheme so alleged must be substantially the scheme proved by the Government or a conviction will be set aside. (*Hass v. U. S.*, 93 F. (2d) 427; *Brown v. U. S.*, 146 F. 219, 8th.)

In view of the foregoing rules of law, the indictment can only be interpreted as one alleging a scheme for obtaining money by making some of the numerous misrepresentations set forth in the indictment, and defendants were entitled to, and did assume it was concerning such a scheme that proof would be offered. It is not contended that the Government must prove the existence of all alleged misrepresentations. However, it is contended that, where the scheme alleged in the indictment is one to obtain money by misrepresentations, then some at least of those representations must be proved false. An inspection of the cases cited by the Government will show that they do not conflict with the foregoing statement or with the decision of the Circuit Court of Appeals. They represent cases where a fiduciary has defrauded a beneficiary through a breach of trust. Thus, in *U. S. v. Buckner*, 108 F. (2d) 921, Buckner, as a member of a committee of bondholders, intentionally misused the money collected to further their cause and also used his position of trust for the purpose of making a profit for himself by the use of inside information. This was the charge which was made against him in the indictment. In other words, he was

charged under an indictment which alleged a scheme amounting to a breach of trust, and he was tried on the scheme laid in that indictment. Similarly, in *Glover v. U. S.*, 125 F. (2d) 291, the indictment charged that the defendant, a public official, devised a scheme corruptly to obtain improvements upon lands purchased and owned by him by using state funds for their improvement. In *U. S. v. Groves*, 122 F. (2d) 87, one defendant, who was a director of the corporation involved, was charged with conspiring with others to buy stock and resell it to the corporation at a higher figure. Thus, it appears, from an inspection of the cases cited, that in each and all the scheme charged was a scheme to defraud by misuse of a trust relationship. We do not question that they are correct statements of law, but merely assert that they are inapplicable to the situation before the court.

**D. The Rule That a Charge of Fraud May Be Supported by Proof That Statements Were Made With a Reckless Disregard of Their Truth or Falsity Is Inapplicable to This Case.**

As stated before, the decision of the Circuit Court is based upon the erroneous nature of the instruction given. The Circuit Court of Appeals held that it was error not to submit to the jury the truth or falsity of the representations set forth in paragraphs 1-18 of the indictment, and that it was incumbent that proof be made that some at least of the representations were false.

The Government now claims that a charge of fraud is supported by proof that the statements were made with a reckless disregard of their truth or falsity. We do not question that the rule is that the element of *fraudulent intent* in making a representation may be supplied by proof

that the statement was made recklessly or in disregard of the truth, and that is all the cases cited hold.

In *Cooper v. Schlesinger*, 111 U. S. 148, the court states that one cause of action, regarding steel-making facilities, was founded upon knowledge of the falsity of the representations. The trial jury was instructed that, if a person makes a *false* statement it is not necessary in order to prove fraud that he know precisely that it is false; "that it is enough if it is recklessly made without belief in its truth. . . ." An exception to that instruction was properly overruled.

In *Pierce v. U. S.* the defendants were charged with criminal espionage. The court states that the third count against them depended upon the falsity of certain material printed and distributed and knowledge of its falsity. Evidence was introduced of the falsity of the material. The court also states that since it involved, as it did, the reason for our entrance into the last war, it was common knowledge that the statements made were false. The court then states, "The jury was warranted in finding that the statements were false in fact and known to be so by defendants, or else distributed recklessly, without effort to ascertain the truth. . . ." Clearly, the recklessness mentioned in the court's statement refers to the knowledge of falsity and not to whether or not the statements were in fact false. Other evidence had been introduced to prove that fact. It is one thing to hold that proof of fraudulent intent may be made by proof that the statement is made recklessly without ascertaining its truth or falsity. It is quite another to hold that a defendant may be found guilty of fraud when he made a truthful statement merely because he did not make sufficient investigation before making such statement.

The instruction held error disregards the truth or falsity of the representation and justifies conviction irrespective of truth or falsity, if the representation is not believed. The decision of the court does no more than determine that where a false representation is charged to have been made, the falsity thereof must be shown. The indictment was that certain representations were false *and* were known by the defendants to be false. Both of those elements had to be proved by the Government, not simply one of them. While the element of knowledge may be proved by showing what is apparently accepted as its equivalent—that the statement is recklessly made without investigation as to its truth or falsity—the falsity of the representation is an essential element of an indictment and of the proof under it. It seems never to have been questioned but that some at least of the representations charged to be false must be proved false, the only question having been whether the Government must prove that substantially all of the representations in an indictment are false. (*Mathews v. U. S.*, 15 F. (2d) 139 (8th); *Havener v. U. S.*, 49 F. (2d) 196 (10th).)

In *Hass v. U. S.*, 93 F. (2d) 427, it was questioned whether an indictment was sufficient which, while alleging the representations to be false, apparently did not allege specifically wherein they were false. The court upheld the indictment, stating that an allegation that a representation was false was a sufficient negation of its truth.

In *West v. U. S.*, 68 F. (2d) 96 (10th), a mail fraud action, where the defendants were charged with selling a compound falsely representing that it would assist in the cure of syphilis, the court instructed the jury as follows:

> "So the whole case boils down to a question of their intent or honesty of purpose in making the rep-

resentations they did in those letters and in selling and distributing this so-called chloride of gold and sodium (the compound involved) as a cure for blood disease or syphilis . . ."

It will be noted that the foregoing instruction is somewhat similar to that criticized by the Circuit Court in the case at bar, although it is not as strong because it did not, as in the case at bar, direct a verdict of guilty if the jury did not believe the remedy had efficacy. The court held that if the compound was a cure or remedy, as represented, then no offense, as charged in the indictment, was committed by defendants, and that the burden was upon the prosecution to prove by substantial evidence that it was not a cure or remedy, before the court could submit the case to the jury. The court further held that if the representations were in fact false, even so, the defendants would not be guilty unless they knew them to be false or acted with reckless indifference as to their truth or falsity; that in submitting only this issue to the jury and assuming that the compound was not, in fact, a remedy, the court had erred as it had failed at any point in its instructions to tell the jury that if the remedy was an effective one, defendants could not be convicted. The judgment was reversed on the ground that the instructions were improper.

No case of which we have knowledge supports the Government's contention that proof of the untruthful nature of a representation can be made by showing that the representation was made with a reckless disregard for its truth or falsity.

**E. There Is No Merit in the Claim That the Opinion Furnishes Such Diverse Guidance as to Warrant a Review by This Court.**

Cases where a writ has been granted for this reason vary greatly from the one at bar. In the case of *John Hancock Ins. Co. v. Bartels,* 308 U. S. 180, cases involving the bankruptcy of farmers had been decided differently by the same Circuit Court, due to the divergent views of the judges sitting in the different cases. In *Landis v. North American Co.,* 299 U. S. 248, four judges sat in the case. There were three opinions, only one of which was concurred in by another justice. Both cases presented important questions of law: The first, interpretation of the Bankruptcy Act involving farmers; the second, the validity of the Securities Exchange Act. The court, in each case, mentioned that the divergent views of the different justices, together with the importance of the question involved, concurred in furnishing reason for the granting of the writ, in those cases.

While the Government states in this case that the decision will cause difficulty in the enforcement of the mail fraud statute, the importance of the question involved does not appear beyond that statement. This case involves, not the usual enforcement of the mail fraud statute, but an attempt on the part of the Government to enlarge its scope tremendously. So far as we are able to ascertain, this is the first attempt on its part to seek to dissolve a substantial religious sect by charging that its leaders were not teaching in good faith. Undoubtedly, the framers of the statute never had in mind the use of the statute to test the sincerity of new religious sects. To say that an important question of law is involved, because a deci-

sion of the Circuit Court may make such a prosecution more difficult for the Government, is not equivalent to a showing that an important question of law is involved. We submit that the discretion of this court in granting or denying the writ should be exercised on behalf of freedom of religion rather than for the purpose of enlarging the scope of the activities of the Government in the use of the mail fraud statute in connection with prosecution of religious organizations. The Government complains that this case may degenerate into a heresy trial. We submit that as a practical matter this case and every other case of its nature which the Government may attempt will be a heresy trial irrespective of what rules may be attempted to be formulated for it. The record in this case shows that, notwithstanding the statement of the trial court that the I AM religion was not involved, the *modus operandi* of the prosecution was to introduce the teachings of these people and then hold them up to ridicule and abuse before a jury of contrary belief. R. pp. 1155, 1160, 1540, 1503, 1237, 1213, 1247.]

However, aside from the question of the importance of any question now presented by the Government in this case, the opinion of the Circuit Court is consistent, contrary to the contention of the Government. The opinion of the court holds that if the Government bases an indictment on a scheme to make certain fraudulent representations, it must prove some at least of the representations to have been false. The Government petitioned for a rehearing and then put forth for the first time the theory that a person's belief can constitute a representation, and that the representations charged were of mental condition and not of other fact. The contention could have been

ignored by the justices. However, Justice Denman, in the order denying a rehearing, took occasion to point out, in effect, that, assuming the new contention of the Government to be correct, a denial of an investigation into the truth or falsity of the facts would be error because it would exclude evidence strongly tending "to support an honest belief that they happened." He states: *"The error is as prejudicial to the issue of honest belief as to the issue of purposeful misrepresentation."* No inconsistency exists in holding that an instruction which directs a jury to disregard the occurrence of a fact is prejudicial under the indictment, whether you construe the indictment as alleging a fraudulent representation of that fact or as alleging a fraudulent belief in the occurrence of that fact.

The balance of the opinion on denial of re-hearing points out that if the denial of the pertinency of such evidence was based upon the fact that in the ordinary chain of events the matters involved do not occur, then denial on such ground would be violative of the constitutional guarantee of freedom of religion because it would deny to the religious the right to believe and show that supernatural intervention has occurred. We submit that no inconsistency exists, as alleged.

**F. The Decision of the Circuit Court of Appeals Does Not Overlook the Principle Stated in Seven Cases vs. The United States.**

The contention of the Government is based upon the proposition that the indictment alleges misrepresentations of belief rather than misrepresentations of other facts unconnected with a state of mind. With the contention in mind, we wish to refer to the indictment to ascertain

whether that is in fact true in respect to the representations therein set forth. It is alleged that the defendants schemed that they would "falsely and fraudulently represent to the persons intended to be defrauded, in substance and fact, among other things, as follows" [R. p. 8]:

(a) That Guy W. Ballard had attained a supernatural state of immortality; [R. p. 8]

(b) That he had been selected and designated as a divine messenger; [R. p. 8]

(c) That he, Edna Ballard and Donald Ballard had been selected as divine messengers through whom the ascended masters would communicate; [R. p. 9]

(d) That they were the only ones through whom the spiritual teachings of St. Germain and other ascended masters would be given to the world; [R. p. 10]

(e) That Guy W. Ballard and Edna W. Ballard and Donald Ballard had, by reason of supernatural attainments, power to heal ailments; [R. 12]

(f) That they had divine and supernatural ability to bring forth money, riches and other material needs; [R. p. 13]

(g) That certain magazines and musical compositions were divinely inspired; [R. p. 15]

(h) That the purchase of certain charts would bestow blessings and rewards upon the purchasers; [R. p. 17]

(i) That the followers of the movement, by following its principles and precepts, would, prior to death, achieve the "ability to make their actual physical ascension in their physical, tangible bodies, and would, in fact, ascend and not die."

It is readily observed that the charge is not that the defendants represented that they believed in the foregoing things. The indictment charges that the foregoing representations are not true. It is claimed that because the indictment also contains an allegation to the effect that the defendants well knew the falsity of the representations (Footnote 8, p. 22, of Petition), that the representation is turned into one of belief; however, it seems quite apparent that the portion of the indictment quoted in the petition merely alleges knowledge of the falsity, and goes to the issue of fraudulent intent. It does not, in anywise, alter the allegation that the representations were of fact and that the Government charged that the facts represented were untrue. It now is contended that to require the Government to prove them untrue will transform the trial into a heresy trial. It is not an answer to the contention that certain proof required by law is absent, that to require such proof will transform the trial into a heresy trial. The Government cannot commence what constitutes a heresy trial and then avoid proof by pointing to its repugnance to the American Constitution. The fact remains the allegation that one following certain principles will physically ascend and not die, is a representation of fact. It was the Government (now complaining) which formulated the indictment. If it does not have information as to the facts concerning ascension and immortality, it should not have formulated an indictment requiring it to make such proof.

We do not question that a state of mind may of itself be a fact which may be false and fraudulent, but the opinion of the Circuit Court of Appeals does not overlook that principle, nor is it inconsistent with the case of

*Seven Cases v. United States*, as claimed. That case involved the validity of the Pure Food Law in so far as it related to labelling. It was contended that the statute, in so far as it forbade labels on articles containing statements regarding their curative effects which were false and fraudulent was uncertain and consequently invalid. The statute was attacked on the ground that it entered the domain of speculation and, therefore, violated the "due process" clause. It was contended that an "owner has the right to give his view regarding the effect of his drugs." It was in regard to this contention that the court stated "state of mind is itself a fact, and may be a material fact, and false and fraudulent representations may be made about it." In other words, the statement of the court has reference to a situation where one states his opinions, not one where representations of other facts are made. Somewhat the same situation prevails in the *Knickerbocker Merchandising Co. v. U. S.*, 13 F. (2d) 544. That case merely holds that where one makes a promise, the promise is of a fraudulent nature if, when made, the person had no intention to perform. Both differ from the case at bar because here the Government alleged that certain facts did not exist and the representations alleged in the indictment to have been made are not as to a defendant's state of mind, his views, or opinion.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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## APPENDIX.

### "1937 Radio Broadcast No. 1.

### "THE MIGHTY 'I AM PRESENCE'"

"The Cosmic Moment has struck, Beloved Ones of America, when the Ascended Masters call you to Victory and Freedom in the Light.

"Dear Ones, in this series of ten broadcasts, as I give you the ASCENDED MASTERS' INSTRUCTION on the 'Mighty I Am Presence,' which is the LAW OF LIFE, energy and vibration, you may wonder by what authority I give you this Mighty Knowledge, Mr. Ballard and I were chosen to be the Messengers of the Ascended Master, Saint Germain, because He has prepared us to render this service at this time.

"For more than thirty years, we both earnestly sought for the Truth of Life, knowing that there must be some underlying Law, which if found, would give us the Freedom we craved. The answer to our quest came in 1930, right here in your own glorious America, on the side of Mount Shasta, when Saint Germain, Who is One of the Great Ascended Masters, came forth to Mr. Ballard and made it possible for him to have the transcendent illuminating experiences which Mr. Ballard has recorded in his book, UNVEILED MYSTERIES, written under the pen name of Godfré Ray King. A few months later, in the beautiful Wyoming Rockies and the Grand Teton of Teton National Park, Mr. Ballard was shown and taught the marvels which he has recorded in his book, THE MAGIC PRESENCE.

"He was chosen by Saint Germain, because of previous association and preparation, to have and record these experiences, that the people of America and the world might know and comprehend the Great unknown and unacknowledged Assistance which is now being given to mankind by Himself and the other Ascended Masters, in the face of seeming distress and disorder in the outer world. Through this Understanding, the Great Ascended Masters are trying to arouse the people of America to make conscious determined effort to neutralize the destructive forces that mankind has generated.

"If you wish to know upon what a magnificent plan the destiny of America is founded, and the benefits derived from a conscious understanding of the Ascended Masters' Law of Life, we point you to these two truly transcendent books—UNVEILED MYSTERIES and THE MAGIC PRESENCE. As explained in the Foreword, the exact names, locations, records and treasures, including dates, are withheld intentionally, at the command of Saint Germain, for reasons that are obvious.

"At the close of these experiences, Mr. Ballard returned to our home in Chicago where further explanation of this Mighty Law of Life—the 'Mighty I AM Presence'—was given to us by Saint Germain in person. In a series of seventy-three Discourses, He dictated the Ascended Master Instruction on the use of the Great Creative Word 'I AM,' and the 'Mighty I AM Presence' which is GOD IN ACTION.

"This Knowledge given to us was and is so sacred, so transcendent and so practical that Mr. Ballard, our son, Donald and I are devoting every moment of our lives to the giving of this Work to the people of America.

We ask you not to believe a word we tell you, but to PROVE THE TRUTH OF EVERY WORD WE SAY. During the past two and one-half years, we have stood before more than 225,000 people throughout most of the large cities of the United States of America and given forth this Instruction. We shall continue to do so, until all mankind is set free in the Knowledge of the 'Mighty I AM PRESENCE.'

"Tonight, let us turn our attention to the Understanding of this MIGHTY PRESENCE, the INDIVIDUALIZED GOD-SELF of EVERY HUMAN BEING.

"Down through the ages, mankind has thought of God as being everything from a kindly old gentleman sitting on a golden throne, to a great abstract principle or impersonal force working blindly and heartlessly throughout the world. We bring to you, dear ones, the Perfect logical, acceptable, heart-satisfying ETERNAL LAW AND TRUTH OF LIFE, THE TRUE EXPLANATION OF GOD, AS GIVEN US BY SAINT GERMAIN, JESUS AND THE OTHER ASCENDED MASTERS.

"From out the Heart Center of Infinity comes forth the Individualized Presence of God, clothed in a body of Pure Light Substance. This Electronic Body abides immediately above every human being on earth and pours down into the human form, the Life, the Light, the Substance and Energy that enables the physical body to move, breathe and have Self-Conscious Life. This Individualized Focus of the Great Supreme Source of all Life, is the 'Mighty I AM Presence.' This is the GOD-SELF of every man. In this way, God—Life—governs the Universe by the Individualization of Itself, which every human being is in Reality.

"The withdrawing of this Presence of — the Life energy—from the human form is what we know in the outer physical world as death. The eyes and ears of the body after so-called death, may remain in perfect form, yet the body can neither hear nor see; because the Great Stream of Energy which flows down from the Presence and allows the body to see, hear and move about, has withdrawn. This is what Jesus referred to when He said: 'Of Myself, I can do nothing. It is the Father within that doeth the works,' for He recognized and knew that Great Presence of God, the 'I AM,' and to It gave all acknowledgment in all accomplishment.

"The 'Mighty I AM Presence' of every individual, no matter what the worldly estate, is Almighty, Limitless Intelligence focused and dwelling in an Electronic Body of Blazing Pure Substance and Energy. This is the man referred to in the Bible, who is made in the Image and Likeness of God. It would have been a sad looking God, indeed, if the human form of man was what had been referred to as God's Image; but now we KNOW that It is this Blazing God-Presence, dwelling immediately above every human form in full Perfection which is the Divine man.

"This Blazing Beautiful Presence is the GUARDIAN ANGEL, spoken of down through the centuries. Many individuals have gazed upon their own 'Mighty I AM Presence' and thought they were seeing a Glorious Being sent from God. This Individualized God-Self projects the Attributes of Itself down into the substance of the physical world, creates a body and operates it through the physical senses. It loans the physical body the use of certain attributes and endows it with an intellectual and

Heart Consciousness, through which the God-Self should be allowed to expand Its Light and Perfection and which It always does, unless interfered with by discordant feeling.

"If you doubt that this Great God Presence stands willing and ready to fulfill every constructive wish of your heart, the Ascended Masters say to you: 'If you will call your Presence into action three times daily—earnestly—for five minutes, keeping your feelings harmonious, inside of ten days you would have the evidence in your own experience so strong that nothing could turn you aside.' Say to your Great God Presence WHICH IS ABOVE YOU: '"Mighty I AM Presence"! release into my world as Your Glad Free Gift of Love, this constructive thing which I so earnestly desire.' Do this three times a day for ten consecutive days with deep feeling, keeping yourself harmonized and the sure and certain answer to this call will be all the proof you will need, to know that what we tell you is the Eternal Truth—the LAW OF LIFE.

"The beautiful colored picture of this 'Mighty I AM Presence' appeared in the February Issue of this magazine. Through the use of this eye picture of the PRESENCE, you can more quickly comprehend It, and release Its Mighty Power in Its Fulness through your body to heal, bless and release Its Perfection out into your world and to all you contact.

"You may ask: 'If each human form has a Perfect God Presence pouring into it God's own Perfect Substance, why is not the human being the out-picturing of this full Perfection?'

"Here Blessed Ones, is the most illuminating Understanding of the LAW OF LIFE ever given to mankind.

That Perfect substance and energy from the Presence, as It flows into the body of the individual, would remain Pure and Perfect and always out-picture Perfection; if it were not for the requalification, through discordant feeling an inharmony, with which the individual clothes his God-given Energy. Our work as Messengers of Saint Germain, is to show you Blessed Ones, how you can, through harmonizing your feelings and recognizing this Pure God Energy, allow It to sweep into your bodies, in Its original pure state and full Power, to cleanse and purify your worlds of everything undesirable. When you learn to do this, you will be fulfilling the commands which Jesus gave: 'BE YE PERFECT, EVEN AS YOUR FATHER IN HEAVEN IS PERFECT. YE ARE GODS, THE THINGS I DO SHALL YE DO ALSO AND GREATER THINGS THAN THESE SHALL YE DO.'

"During the coming week, we shall give to you the practical application and use of this MIGHTY LAW OF LIFE.

"Each evening as we close, we invite you to join us in a powerful loving decree for the blessing and perfecting of yourselves, your homes, America and the world. Tonight, we say: 'MIGHTY I AM PRESENCE! AND GREAT HOST OF ASCENDED MASTERS! POUR THE FULNESS OF YOUR LIGHT AND LOVE INTO EVERY BLESSED ONE WHO HAS LISTENED TO THESE WORDS AND TO EVERYONE IN THE WORLD! AWAKEN THEM INTO

THE FULL TRUTH AND REALITY OF YOUR "MIGHTY I AM PRESENCE"! SHOW THEM THE REALITY OF YOURSELF, AS THE ONLY DIRECTING CONTROLLING PRESENCE AND POWER IN THEIR DAILY LIVES! PRODUCE PERFECTION AND HOLD YOUR DOMINION WITHIN THEM AND THEIR WORLDS FOREVER! WHAT WE DECREE FOR OURSELVES, WE COMMAND FOR ALL MANKIND, THE EARTH AND ITS ATMOSPHERE!'

"We enfold you in the Ascended Masters' Mantle of Light and Love to give you every good thing forever! and remember:

" 'The Light of God never fails'!

" 'The Light of God never fails'!

" 'The Light of God never fails'!

and 'The Mighty I AM Presence' is that Light!" ("The Voice," June, 1937, pp. 9-15, incl.)

**Opinion of the United States Circuit Court of Appeal.**

In the United States Circuit Court of Appeals for the Ninth Circuit.

[No. 10,059. Jun. 21, 1943.]

Edna W. Ballard and Donald Ballard, appellants, vs. United States of America, appellee.

Appeal from the District Court of the United States for the Southern District of California, Central Division.

Before Denman, Mathews and Stephens, Circuit Judges.

MATHEWS, Circuit Judge.

Edna W. Ballard, Donald Ballard, Betty Mundy, Paul Stickell, Louise Majerus and William J. Cassiere were indicted in twelve counts. They demurred to the indictment and to each count thereof on the ground that no count thereof charged an offense. The demurrer was overruled. They pleaded not guilty and were tried. In the course of the trial count 1 was dismissed. Edna W. Ballard was convicted on counts 2, 3, 5, 7, 8, 11 and 12 and acquitted on counts 4, 6, 9 and 10. Donald Ballard was convicted on counts 8, 11 and 12 and acquitted on counts 2-7, 9 and 10. Mundy, Stickell, Majerus and Cassiere were acquitted on counts 2-12. Edna W. Ballard and Donald Ballard were sentenced and have appealed.

Appellants assign as error the overruling of the demurrer. Counts 1-11 of the indictment were based on §215 of the Criminal Code, 18 U. S. C. A., §338, which provides: "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, * * * shall, for the purpose of executing such scheme or artifice or attempting so to

do, place, or cause to be placed, any letter, postal card, package, writing, circular, pamphlet, or advertisement, whether addressed to any person residing within or outside the United States, in any post office * *. * of the United States, * * * to be sent or delivered by the post office establishment of the United States, * * * or shall knowingly cause to be delivered by mail according to the direction thereon, * * * any such letter, postal card, package, writing, circular, pamphlet, or advertisement, shall be fined not more than $1,000, or imprisoned not more than five years, or both."

Counts 1-11 allege, in substance, that defendants[1] and Guy W. Ballard[2] devised a scheme to defraud and for obtaining money and property by means of false pretenses, representations and promises, and that the scheme was, in substance, that defendants and Guy W. Ballard would:

(a) Create, organize and operate a movement known as the "I Am" movement and, by means of the representations hereinafter set forth, solicit, induce, encourage, persuade and entice persons to become members and followers thereof.

(b) Form, organize, dominate and control a corporation known as the Saint Germain Foundation and arrange for the election of Donald Ballard as president, Paul Potter as vice president and Edna W. Ballard as secretary and treasurer thereof.

(c) By means of the representations hereinafter set forth, solicit, induce, encourage, persuade and entice per-

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[1]Appellants (Edna W. Ballard and Donald Ballard), Mundy, Stickell, Majerus and Cassiere.

[2]Guy W. Ballard (husband of Edna W. Ballard and father of Donald Ballard) died before the indictment was returned.

sons to give money and property to the Saint Germain Foundation.

(d) Form, organize, dominate and control a corporation known as the Saint Germain Press and arrange for the election of Donald Ballard as president, Paul Potter as vice president and Edna W. Ballard as secretary and treasurer thereof.

(e) By means of the representations hereinafter set forth, solicit, induce, encourage, persuade and entice persons to purchase from defendants and Guy W. Ballard books, charts, pamphlets, magazines and other matter published by the Saint Germain Press.

(f) By means of the representations hereinafter set forth, sell pictures, charts, paraphernalia and other articles.

(g) Arrange for, establish and maintain branch offices, meeting rooms and reading rooms in cities and towns throughout the United States, and arrange for and conduct meetings, classes and lectures at such offices and rooms for the instruction of persons in the principles, precepts and doctrines of the "I Am" movement.

(h) Arrange for and conduct radio programs and broadcasts over radio stations in the United States for the instruction of persons in the principles, precepts and doctrines of the "I Am" movement.

(i) In such meetings, lectures and broadcasts and by means of letters, books, pamphlets and other written and printed matter, make the following representations:

(1) That Guy W. Ballard had attained a supernatural state of self-immortality, which enabled him to conquer disease, death, old age, poverty and misery.

(2) That Guy W. Ballard had been selected and designated by Saint Germain[3] as a divine messenger through whom the words of Saint Germain would be transmitted to mankind.

(3) That the Ballards,[4] by reason of their high spiritual attainments and righteous conduct, had been selected as divine messengers through whom the words of "ascended masters,"[5] including Saint Germain, would be communicated to mankind in the teachings of the "I Am" movement.

(4) That the Ballards had, by supernatural visitation, been accorded a supernatural state of self-immortality of body and had been appointed messengers of divine entities and "ascended masters," and that it was only through them that the teachings and principles of such divine entities and "ascended masters" would be transmitted to mankind.

(5) That the teachings, precepts, doctrines and principles of the "I Am" movement were the only channels through which the spiritual teachings or words of Saint Germain and other "ascended masters" would be given to the world, and that said words and teachings were essential to the salvation of mankind.

(6) That the Ballards had attained a supernatural state of self-immortality, which enabled them to be entirely free

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[3]Saint Germain (Germanus), Bishop of Auxerre, died in the year 448. International Encyclopaedia, 2d Ed., Vol. 9, p. 670.

[4]Appellants and Guy W. Ballard.

[5]Appellants' brief states: "The Ascended Masters, in whom the 'I Am' Activity believes, are Divine Beings who exist in an intermediate sphere between God and man. The Ascended Masters are particularly devoted to the assistance of mankind in the attainment of high moral standards, harmony and eventual salvation. There are many Ascended Masters, Saint Germain being the most prominent in the 'I Am' Activity."

from ailments common to man and to conquer disease, death, old age, poverty and misery, and that they could and would transmit that supernatural state to others willing to pay therefor.

(7) That the Ballards had, by reason of supernatural attainments, the power to heal persons of ailments, diseases and injuries and the power to cure persons of diseases normally classified as curable and of diseases normally classified as incurable, and had in fact cured hundreds of persons.

(8) That the Ballards had, by reason of divine origin, acquired a great healing power, and that followers of the "I Am" movement could acquire such power, achieve perfect bodies and heal themselves of all human ailments by giving implicit obedience to the precepts, principles, teachings and doctrines of said movement.

(9) That the Ballards had a divine and supernatural ability to bring forth from a supernatural state money, riches and other things necessary to mankind and could transmit that ability to others willing to pay therefor.

(10) That books published and sold by the Ballards[6] were the result of divine visitations and dictations to them by Saint Germain and other supernatural entities, that said books contained divine instructions for the salvation of mankind, and that the Ballards actually encountered the experiences related in said books.

(11) That magazines, booklets, circulars, letters, "edicts," "decrees" and musical composition published, circulated and sold by the Ballards were divinely inspired

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[6]Including "Unveiled Mysteries" and "The Magic Presence," both of which were written by Guy W. Ballard under the pen name of Godfre Ray King.

and dictated by supernatural entities or "ascended masters" and were a part of the medium through which salvation could be obtained.

(12) That is was solely by reason of the Ballards' teaching and their embodiment in the "I Am" movement and by reason of the Ballards' divine power and influence that the United States was saved from destruction; that, by divine inspiration, there had been accorded to the Ballards the ability to maintain the sovereignty and general welfare of the United States; and that, by reason thereof, complete obedience to their teachings, commands and decrees was absolutely necessary for the safety, welfare and sovereignty of the United States and for divine justice to be had in governmental and industrial activities.

(13) That a certain picture, reproductions of which were sold by the Ballards, was an actual picture of Saint Germain and was the result of a visitation by Saint Germain to Charles Sindelar, and that the purchase of reproductions of said picture by followers of the "I Am" movement was "desirable in their aim and hope to achieve salvation."

(14) That the purchase of certain charts, phonograph records and other articles from the Ballards by followers of the "I Am" movement would bestow upon the purchasers "great blessings and rewards in their aim to achieve salvation."

(15) That there would be, in one or more places in the United States, an actual visitation of "ascended masters" or divine entities, and that said divine entities would then and there appear in physical form before the assembled followers of the "I Am" movement.

(16) That a cataclysm or the end of the world was approaching, that there was therefore no necessity to provide for the future or to save money or other things of value, and that followers of the "I Am" movement, instead of saving their money, should give it to the Ballards.

(17) That any person who criticized or questioned the teachings of the Ballards would be denounced or punished by "ascended masters."

(18) That persons who followed the principles, doctrines and precepts of the "I Am" movement and the teachings of the Ballards would not die, but would "ascend" in their physical, tangible bodies, associate with divine entities and "ascended masters" and be able thereafter to return to earth at will, and to "reascend" if they so desired.

Counts 1-11 allege that all of the aforesaid representations were false, and that defendants and Guy W. Ballard knew they were false.

Count 1 alleges that, for the purpose of executing the scheme, defendants and Guy W. Ballard knowingly caused to be delivered by mail according to the direction thereon a check in an envelope addressed to Mrs. G. W. Ballard, Los Angeles, California. Counts 2, 5, 6 and 8 are similar to count 1, except that count 2 relates to a check in an envelope addressed to Allied Advertising Agencies, Inc., Los Angeles, California; count 5 relates to a letter in an envelope addressed to Mr. Harry N. Rogers, Los Angeles, California; count 6 relates to a letter in an envelope addressed to Mrs. Portia Terry, Sierra Madre, California, and count 8 relates to a magazine in an envelope addressed to Miss Lucille C. Seifert, Los Angeles, California.

Count 3 alleges that, for the purpose of executing the scheme, defendants and Guy W. Ballard placed and caused to be placed in the United States post office at Los Angeles, California, to be sent and delivered by the post office establishment of the United States, a check in an envelope addressed to Uptown State Bank, Chicago, Illinois. Counts 4, 7, 9, 10 and 11 are similar to count 3, except that count 4 relates to a leter in an envelope addressed to Mr. and Mrs. Arthur Bliss, Chicago, Illinois; count 7 relates to a letter in an envelope addressed to Mrs. Muriel Bliss, Chicago, Illinois; count 9 relates to a letter in an envelope addressed to Mr. G. W. Ballard, Washington, D. C.; count 10 relates to a letter in an envelope addressed to Mr. Harry N. Rogers, Los Angeles, California; and count 11 relates to a letter in an envelope addressed to Gladys Ethel Kemp, Glendale, California.

Count 12 was based on §37 of the Criminal Code, 18 U. S. C. A., §88, which provides: "If two or more persons conspire * * * to commit any offense against the United States, * *, * and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both." Count 12 alleges that defendants and Guy W. Ballard conspired to commit the offenses charged in counts 1-11 and did certain acts[7] to effect the object of the conspiracy. We conclude that counts 1-11 charge offenses under §215 of the Criminal Code; that count 12 charges an offense under §37 of the Criminal Code; and that, as to each and all of said counts, the demurrer was properly overruled.

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[7]Fourteen overt acts are alleged.

Appellants assign as error the admission of testimony concerning the cost per copy of publishing "Unveiled Mysteries" and the price per copy received by the Ballards for "Unveiled Mysteries" and "The Magic Presence;"[8] testimony concerning the gross and net amounts received from a class conducted by the Ballards at Philadelphia in 1934; a statement (exhibit 99) showing amounts received for books, charts and pictures sold by the Ballards between April 4, 1935, and September 1, 1935; a statement (exhibit 142) showing amounts received for books, charts, pictures, magazines and other articles sold by the Ballards and amounts received by them as "love gifts" between December 23, 1938, and December 31, 1938; a statement (exhibit 143) showing amounts received by the Ballards as "love gifts" between October 23, 1939, and December 4, 1939; testimony concerning amounts expended by the Ballards for radio advertising; and testimony concerning the number of radio stations over which "transcriptions" made by the Ballards were broadcast.

This evidence was objected to on the ground that it was immaterial. The objection was not well founded. To prove the offenses charged in counts 1-11, it was necessary to prove the scheme described in counts 1-11. A part of the scheme described in counts 1-11 was that defendants and Guy W. Ballard would obtain money in the manner and by the means described in counts 1-11. See paragraphs (a) to (i), *supra*. The testimony and exhibits mentioned above tended to prove that part of the scheme and hence were material.

Appellants assign as error the admission of photostatic copies (exhibit 203) of letters written by Guy W. Ballard

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[8]See footnote 6.

to Edna W. Ballard in August, September and October, 1930. The letters were put in evidence by appellants at a previous trial and (after copies had been made) were, by order of the court, returned to Edna W. Ballard. The copies were not objected to because they were copies, nor was their materiality questioned. Objections to their admission were that "the use thereof violated Articles 4, 5 and 6 of the Constitution;"[9] that "the letters were not voluntarily produced; but involuntarily, by reason of the necessity of rebutting the erroneous position that the Government took at the former trial;"[10] that the letters "had been produced at the former trial and were not in possession of the Government by reason of physical or moral compulsion;" and that such compulsion "amounted to a violation of the Constitution against unlawful search and seizure."[11] None of these objections was well founded. The letters were voluntarily produced and put in evidence by appellants. There was no compulsion, no search or seizure, no violation of the Constitution. Cf. Perlman v. United States, 247 U. S. 7, 13-15; Lisansky v. United States, 4 Cir., 31 F. 2d 846, 850; Schauble v. United States, 8 Cir., 40 F. 2d 363, 365.

Appellants assign as error the following statement by the court to the jury:[12] "Now, gentlemen, here is the issue in this case: First, the defendants in this case made

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[9]Meaning probably the Fourth, Fifth and Sixth Amendments.

[10]"Unveiled Mysteries" purports to have been written at Mount Shasta, California in August, September and October, 1930. The Government contended at the former trial that Guy W. Ballard, author of "Unveiled Mysteries," was not at Mount Shasta in either of those months. To show that he was there, appellants put in evidence the above mentioned letters.

[11]Meaning probably the Fourth Amendment.

[12]The statement was made before the Government had finished putting in its case. Why it was made the record does not show.

certain representations of belief in a divinity and in a supernatural power. Some of the teachings of the defendants, representations, might seem extremely improbable to a great many people. For instance, the appearance of Jesus to dictate some of the works that we have had introduced in evidence * * * or shaking hands with Jesus.[13] To some people that might seem highly improbable. I point that out as one of the many statements. Whether that is true or not is not the concern of this court and is not the concern of the jury * * *. As far as this court sees the issue, it is immaterial what these defendants preached or wrote or taught in their classes. They [the jury] are not going to be permitted to speculate on the actuality of the happening of those incidents. * * * The issue is: Did these defendants honestly and in good faith believe those things? If they did, they should be acquitted. * * * If these defendants did not believe those things, [if] they did not believe that Jesus came down and dictated, or that Saint Germain came down and dictated,[14] did not believe the things that they wrote, the things that they preached, but used the mail for the purpose of getting money, the jury should find them guilty."

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[13]There was evidence that the Ballards represented that certain works published and sold by them were dictated by Jesus. There was evidence that Edna W. Ballard represented that she and the other Ballards had shaken hands with Jesus.

[14]There was evidence that the Ballards represented that certain works published and sold by them were dictated by Saint Germain.

That was not a correct statement of the issues. The issues were (1) whether defendants and Guy W. Ballard devised the scheme described in counts 1-11; (2) whether, for the purpose of executing the scheme, they used the mails in the manner described in counts 1-11; (3) whether they conspired to commit any of the offenses charged in counts 1-11; and (4) whether, to effect the object of the conspiracy, any party thereto committed any of the overt acts charged in count 12.

A part of the scheme described in counts 1-11 was that defendants and Guy W. Ballard would make false representations, namely, the allegedly false representations set forth in paragraphs (1) to (18), *supra*. Hence, to prove that defendants and Guy W. Ballard devised the scheme described in counts 1-11, it was necessary to prove that they schemed to make some, at least, of the representations set forth in paragraphs (1) to (18),[15] and that some, at least, of the representations which they schemed to make were false.

There was substantial evidence that defendants and Guy W. Ballard schemed to make some, if not all, of the representations set forth in paragraphs (1) to (18), and that some, if not all, of the representations which they schemed to make were false. Whether such representations were false or true was a question which should have been sub-

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[15]It was not necessary to prove that they schemed to make all of the representations set forth in paragraphs (1) to (18). Lewis v. United States, 9 Cir., 38 F. 2d 406, 410; Levine v. United States, 9 Cir., 79 F. 2d 364, 369.

mitted to the jury. Instead of submitting it, the court, by its above quoted statement, excluded that question from the jury's consideration. This was error. The error was not cured by the charge subsequently given the jury. Instead, the above quoted statement was, in substance and effect, repeated in the charge.

Judgment reversed and case remanded with directions to grant appellants a new trial.

STEPHENS, Circuit Judge, dissenting:

The language of the trial judge in regard to the issue of the case as quoted in the majority opinion was not intended as an instruction upon the ultimate issues and could not have been so understood by the jurors. The instructions as a whole, it seems to me, compel this conclusion. I am not convinced that the judge's comments and instructions upon the decisive point of the majority opinion were not more favorable to the defendants than the law required.

(Endorsed): Opinion and Dissenting Opinion. Filed Jun. 21, 1943. Paul P. O'Brien, Clerk.

**Opinion of the United States Circuit Court of Appeal.**

In the United States Circuit Court of Appeals for the Ninth Circuit.

[No. 10,059. Sep. 29, 1943.]

Edna W. Ballard and Donald Ballard, appellants, vs. United States of America, appellee.

Before: Denman, Mathews and Stephens, Circuit Judges.

The petition for rehearing is denied.

WILLIAM DENMAN,
United States Circuit Judge.

CLIFTON MATHEWS,
United States Circuit Judge.

STEPHENS, Circuit Judge, dissents.

(Endorsed): Order denying petition for rehearing Filed Sept. 29, 1943. Paul P. O'Brien, Clerk.

DENMAN, Circuit Judge, concurring in the denial of the petition for rehearing:

Our opinion holds that the district court erred in excluding facts tending to show the truth of appellants' *"representations"* concerning certain transactions in which Jesus was present and participating.

The petition for rehearing contends that there is another issue before the jury, *i. e.*, whether appellants honestly *"believed"* their representations that certain works

published and sold were dictated by Jesus and whether Mrs. Ballard *believed* her representations that she and other Ballards had shaken hands with Jesus. The petition cites the district court's instruction:

> "The issue is: Did these defendants honestly and in good faith believe those things? If they did, they should be acquitted * * *."

It would be strong evidence in support of this issue of the mental condition of *belief*, that these transactions with Jesus actually occurred in their presence. The right to produce such evidence was denied appellants.

Before the close of the Government's case the district court made its ruling advising the jury that "whether that [dictation by Jesus and shaking hands with Jesus] occurred is not the concern of the court and is not the concern of the jury * * *. They [the jury] are not going to be permitted to speculate on the actuality of the happenings of these incidents."

This was followed by the court's instruction in submitting the case to the jury:

> "The defendants in this case made certain representations of beliefs in a divinity and in a supernatural power. Some of the teachings or representations of the defendants might seem extremely improbable to a great many people—for instance: the appearance of Jesus to dictate some of the works which have been introduced in evidence; the incident testified to by one of the defendants, Mrs. G. W. Ballard, that she shook hands with Jesus * * * these and other similar representations and statements might seem highly improbable to many people. Whether these incidents actually happened or not is for your consideration."

Here we have not only the exclusion of proof and the instruction to disregard facts which would strongly tend to support an honest belief that they happened, but the suggestion of their improbability. The error is as prejudicial to the issue of honest belief as to the issue of purposeful misrepresentation.

The petition's contention that the judgment of conviction should stand because there is other strong evidence of guilt has no merit. If on a new trial, the jury should be persuaded to believe that these miraculous events had occurred, they well may acquit these appellants. The district court did not give its reason for its ruling and instruction. If the reason be because such facts could occur in no possible chain of natural material causation, it is a denial to the religious of the right to prove one of the bases of their belief in the intervention of the supernatural in the daily lives of human beings—an obvious denial of the freedom of religion of the First Amendment of the Constitution.

(Endorsed): Opinion of Denman concurring in denial of petition for rehearing. Filed September 29, 1943. Paul P. O'Brien, Clerk.